

APPEAL NO. 042054  
FILED SEPTEMBER 27, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 3, 2004. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) did not sustain a compensable low back injury on \_\_\_\_\_. The claimant appeals, arguing that the hearing officer's injury determination is not supported by the record and is against the great weight and preponderance of the medical evidence. The claimant also alleges that the respondent (self-insured) committed a number of administrative violations. The self-insured responded, urging affirmance and objecting to the new evidence submitted by the claimant with her request for review. The self-insured additionally argued that a CCH is not the appropriate forum for the adjudication of alleged administrative violations.

DECISION

Affirmed.

In determining whether the hearing officer's decision is sufficiently supported by the evidence, we will generally not consider evidence that was not submitted into the record at the hearing. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the documents attached to the claimant's request for review and, consequently, we decline to consider them on appeal.

The claimant alleged in her request for review that the self-insured committed numerous administrative violations. However, these allegations are brought up for the first time on appeal, and any alleged administrative violations are matters for the Texas Workers' Compensation Commission's Division of Compliance and Practices.

The claimant had the burden to prove that she sustained a compensable injury as defined by Section 401.011(10). Generally, in workers' compensation cases, the issues of injury and disability may be established by the claimant's testimony. Houston General Insurance Company v. Pegues, 514 S.W.2d 492 (Tex. Civ. App.-Texarkana 1974, writ ref'd n.r.e.). It has also been held that to the extent that the aggravation of a prior injury caused damage or harm to the physical structure of the employee, it can be said that the resulting condition falls within the meaning of "injury" as defined by the 1989 Act. Cooper v. St. Paul Fire & Marine Insurance Company, 985 S.W.2d 614 (Tex.

App.-Amarillo, no pet.). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established.

In the instant case, the hearing officer was not persuaded that the claimant met her burden of proof on the disputed issue and noted that the claimant's probative evidence established that the claimant suffered from a preexisting low back condition that was not aggravated, enhanced, accelerated, nor worsened in the claimed incident on \_\_\_\_\_. Although there is conflicting evidence in this case, we conclude that the hearing officer's determination that the claimant did not sustain a low back injury on \_\_\_\_\_, in the course and scope of employment with the self-insured, is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Robert W. Potts  
Appeals Judge